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7 APPEALS, VARIANCES, INTERPRETATIONS, AND MODIFICATIONS

(11/16/04) (7/15/08) (10/18/11)

7-A APPEALS, VARIANCES, INTERPRETATIONS, AND MODIFICATIONS

There shall be established a Board of Zoning Appeals (Board) that shall consider appeals, variances, and zoning map interpretations.

7-A-1 Board of Zoning Appeals – Organization and Procedures

7-A-1-a Membership

The Board shall consist of five residents of Clarke County, appointed by the Circuit Court of Clarke County. Members of the Board shall hold no other public office in the locality except that one may be a member of the Clarke County Planning Commission.

7-A-1-b Alternate Members

The Board of Supervisors may request the Circuit Court of Clarke County to appoint not more than three alternates to the Board of Zoning Appeals, pursuant to the provisions of Virginia Code §15.2-2308(A)

7-A-1-c Terms of Office

The terms of office for members of the Board shall be for five years each except that original appointments shall be made for such terms that the term of one member shall expire each year. The Secretary of the Board shall notify the court at least thirty (30) days in advance of the expiration of any term of office, and shall also notify the Court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. A member whose term expires shall continue to serve until his successor is appointed and qualifies.

7-A-1-d Officers

With the exception of its Secretary and the alternates, the Board shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. The Board may elect as its Secretary either one of its members or a qualified individual who is not a member of the Board, excluding the alternate members. A Secretary who is not a member of the Board shall not be entitled to vote on matters before the Board.

7-A-1-e Quorum

(12/15/09)

For the conduct of any hearing, a quorum shall be not less than a majority of all the members of the Board.

7-A-1-f Procedures

The Board may make, alter and rescind rules and forms for its procedures, consistent with County ordinances and general laws of the Commonwealth.

- 7-A-1-g **Records**
The Board shall keep minutes and a full record of its proceedings and other official actions, which shall be filed in the office of the Board and shall be public records.
- 7-A-1-h **Report**
The Board shall submit a report of its activities to the governing body at least once each year.
- 7-A-1-i **Witnesses**
The Chairman of the Board, or the acting Chairman in the Chairman's absence, may compel attendance of witnesses and administer oaths of witnesses.
- 7-A-1-j **Employees**
Within the limits of funds appropriated by the Board of Supervisors, the Board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services.
- 7-A-1-k **Compensation**
Members of the Board may receive such compensation as may be authorized by the Board of Supervisors.
- 7-A-1-l **Removal**
Any Board member or alternate may be removed for malfeasance, misfeasance, or nonfeasance in office, or for other just cause, by the Court that appointed the member or alternate, after a hearing held after at least fifteen (15) days notice.
- 7-A-1-m **Meetings**
The Board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the Chairman, or Vice-Chairman if the Chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with Virginia Code § 15.2-2312 shall be conducted at the continued meeting and no further advertisement shall be required.
- 7-A-1-n **Appeal of Decision of Board**
Any person or persons jointly or severally aggrieved by any decision of the Board, or any aggrieved taxpayer, or any officer, department, board, or bureau of the locality, may file with the Clerk of the Clarke County Circuit Court a petition specifying the grounds on which aggrieved within 30 days after the final decision of the Board.
- 7-A-2 **Appeals of Administrative Determinations**
- 7-A-2-a The Board shall hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of the Zoning Ordinance. The decision on such appeal shall be based on the Board's judgment of whether the administrative officer was correct. The board shall consider the purpose and intent of any applicable ordinances, laws, and regulations in making its decision.

- 7-A-2-b An appeal to the Board may be taken by any person aggrieved or by any officer, department, board, or bureau of the County affected by any decision of the Zoning Administrator, or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of the Zoning Ordinance, or any modification of zoning requirements pursuant to Virginia Code Section 15.2-2286.
- 7-A-2-c (7/15/08) Any written notice of a zoning violation or any written order or administrative determination of the Zoning Administrator shall include a statement informing the recipient of the recipient's right to appeal the notice of zoning violation or the written order or administrative determination within 30 days, and that the decision shall be final and unappealable if not appealed within 30 days. The appeal period shall not commence until the statement is given. The appeal shall be taken within 30 days after the decision appealed from by filing with the Zoning Administrator, and with the Board, a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.
- 7-A-2-d An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the Board or by a court of record, on application and on notice to the Zoning Administrator and for good cause shown.
- 7-A-2-e The Board shall fix a reasonable time for hearing an appeal, and shall give public notice and hold a public hearing as provided by Virginia Code § 15.2-2204. However, when giving any required notice to the owners, their agents, or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail.
- 7-A-2-f The Board shall make its decision within 90 days of the filing of the appeal, unless the appellant and the Board mutually agree upon an extended period.
- 7-A-2-g In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify, an order, requirement, decision, or determination appealed from.
- 7-A-2-h The concurring vote of a majority of the membership of the Board shall be necessary to reverse any order, requirement, decision, or determination of an administrative officer.
- 7-A-3 Variances
- 7-A-3-a The Board shall hear upon appeal or original application in specific cases requests for variances, as defined in Virginia Code §15.2-2201, from the terms of this ordinance. A variance shall not include a change in use.
- 7-A-3-b Any property owner, tenant (with the written consent of the property owner), government official, department, board, or bureau may make application for a variance. Applications shall be made to the Zoning Administrator in accordance with rules adopted by the Board. The application and accompanying maps, plans, or other information shall be transmitted promptly to the Secretary of the Board, who shall place the matter on the docket to be acted upon by the Board.

- 7-A-3-c The Zoning Administrator shall also transmit a copy of the application to the Planning Commission, which may send a recommendation to the Board or appear as a party at the hearing.
- 7-A-3-d No variance shall be authorized except after public notice and hearing as required by Virginia Code §15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail.
- 7-A-3-e Action on Variance Application
- 7-A-3-f In order to consider granting a variance, the Board must find that the effect of the zoning ordinance on the property under consideration, as it stands, interferes with all reasonable beneficial uses of the property, taken as a whole.
- 7-A-3-g
(12/15/09) No variance shall be granted by the Board unless it finds that:
1. The property owner has shown that
 - a. the property was acquired in good faith, and
 - b. the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property because of (i) the exceptional narrowness, shallowness, size, or shape of the property, or (ii) exceptional topographic condition or other extraordinary situation or condition of the piece of property, or (iii) the condition, situation, or development of property immediately adjacent thereto; or
 2. The Board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant.
- 7-A-3-h No variance shall be granted by the Board unless it further finds that:
1. the strict application of the Zoning Ordinance would produce undue hardship relating to the property; and
 2. the hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
 3. the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance; and
 4. the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning Ordinance.
- 7-A-3-i The concurring vote of a majority of the membership of the Board shall be necessary to approve a variance.
- 7-A-3-j In approving a variance the Board shall tailor the variance to provide the minimum variance necessary to alleviate the hardship, and the Board may impose such conditions regarding the location, character, and other features of the proposed structure or use, as it may deem necessary in the public interest. The Board may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

7-A-3-k The Board will not consider substantially the same application within one year of previous Board action.

7-A-4 Zoning District Map Interpretations

The Board shall hear and decide applications for interpretation of the zoning district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by Virginia Code Section 15.2-2204, the Board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents, or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail. The Board shall not have the power to change substantially the locations of district boundaries as established by ordinance. The concurring vote of a majority of the membership of the Board shall be necessary to decide in favor of the applicant.

7-A-5 Limitation on Powers of Board

The Board shall not have the power to rezone property or to base Board decisions on the merits of the purpose and intent of County ordinances duly adopted by the Board of Supervisors.

7-B MODIFICATIONS

7-B-1 The Zoning Administrator may grant a modification from any provision contained in the Zoning Ordinance with respect to physical requirements on a lot or parcel of land, including but not limited to size, height, location or features of or related to any building, structure, or improvements, if the Administrator finds in writing that:

1. the strict application of the ordinance would produce undue hardship;
2. such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
3. the authorization of the modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification.

7-B-2 The Zoning Administrator may not grant a modification that is more than 10% of a regulation standard.

7-B-3 Before the granting of a modification, the Zoning Administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for modification, and an opportunity to respond to the request within 21 days of the date of the notice. Before the granting of a modification, the Zoning Administrator shall consult with the Chair and Vice-Chair of the Board of Zoning Appeals.

7-B-4 The Zoning Administrator shall make a decision on the application for modification and issue a written decision with a copy provided to the applicant and any adjoining landowner who responded in writing to the notice sent pursuant to this paragraph. The Zoning Administrator shall provide a copy of a written decision to the Board of Zoning Appeals within five working days from making the decision.

7-B-5 The decision of the Zoning Administrator may be appealed to the Board of Zoning Appeals as provided in 7-A of this Ordinance.